

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
December 19, 2016 at 6:00 P.M.

PLEDGE OF ALLEGIANCE A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Jeff Valiant, Chairman; Doris Horn, Mike Moesner, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director, and Molly Barnhill, staff.

MEMBERS ABSENT: Tina Baxter and Terry Dayvolt.

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Mike Moesner and seconded by Mike Winge, the Minutes of the last regular meeting held November 28, 2016, were approved as circulated.

BZA-SU-16-20

APPLICANT: Pampered Pet Nanny LLC, by Megan Anderson, Mbr.

OWNER: Steven & Megan Anderson

PREMISES AFFECTED: Property located on the E side of Libbert RD. approximately 0' NE of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. *(complete legal on file)* 3488 Libbert Rd.

NATURE OF CASE: Applicant requests a Special Use (SU 24) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an addition to an existing dog boarding facility approved in BZA-SU-11-20 on 9/26/11. Addition is for an additional 5 dogs to make facility hold 17 dogs in an "A" Agriculture zoning district. *Advertised in the Standard November 17, 2016 and was continued from the November meeting.*

Mrs. Rector said Ms. Anderson sent the notices certified but not with the return receipt so she has to send them out again and it was too late once we knew how she did it to get to this meeting so it will have to be heard in January.

Attorney Doll said motion to table.

Mike Winge said he'd like to make a motion to table it.

The motion was seconded by Mike Moesner and unanimously carried.

The Chairman said to let the record reflect that Mr. Willis has joined them.

BZA-V-16-19

APPLICANT: Daryl Vanwinkle Construction, LLC, Daryl Vanwinkle, Mbr.

OWNER: Harpole Realty, LLC, Danny Harpole, Mbr.

PREMISES AFFECTED: Property located on the S side of Evansville Federal Dr. approximately 330' W of the intersection formed by Evansville Federal Dr. & SR 261, Ohio Twp. Lot 2 Evansville Federal Subdivision. 7835 SR 66.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to an existing business on property fronting on a dedicated by not maintained county right of way in a "C-3" Highway Commercial zoning district. *Advertised in the Standard November 17, 2016 and this was also continued from the November BZA meeting.*

Daryl Vanwinkle and Danny Harpole were present.

The Chairman called for a staff report.

Mrs. Rector said the existing land use is an ATV shop. She said the surrounding zoning and land use is the property to the north, east and west is C-3 and to the south is C-4. She said there is no flood plain on the property. She said they have an existing driveway off Evansville Federal Drive. She said this lot is in an existing subdivision and Evansville Federal Drive was dedicated to the County but the road has never been accepted for maintenance which is why they need the Variance. She said it says all improvement location permits must be given on a property located on a county or state maintained right-of-way. She said the County Engineer has no desire to accept this road for maintenance and it has been that way for years and the business has been there for years so they are just wanting to add on.

The Chairman asked if they had anything to add.

Danny Harpole said they were just investing in the community.

Mrs. Rector said we do have all the return receipts from certified mail to the adjacent property owners excepts for one green card; when you get that bring it in.

Daryl Vanwinkle said he never has gotten that.

Mrs. Rector said it will eventually come; if not we have the white receipt to show that you have mailed it. She said you might get the entire letter back.

The Chairman asked how big the addition was going to be.

Daryl Vanwinkle said it is about 48' by 72'.

Mrs. Rector said there is a plot in there towards the back. She said and where the additions are going they are not going towards any right-of-ways, right; it's towards the back side.

Attorney Doll said it is going to the west.

Daryl Vanwinkle said yes.

Attorney Doll said it is 22' from the property line; that would be unusual to be in the right-of-way.

Being no further questions from the Board and no remonstrators present the Chairman called for a motion.

I, Doris Horn, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the County's failure thus far to accept Evansville Federal Drive as a public street.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.

7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.

Motion was seconded by Mike Winge and unanimously carried

BZA-V-16-21

APPLICANT: Hobgood Contractors by Chuck Nall, Sales Manager

OWNER: Marc & Darlene Fischer

PREMISES AFFECTED: Property located on the W side of Yankeetown Rd. approximately 550' S of the intersection formed by Hills Rd and Yankeetown Rd, Anderson Twp. (Complete legal on file) 7599 Yankeetown Rd

NATURE OF CASE: Applicants request a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to an unattached accessory building not meeting the minimum 10' between all structures in an "A" Agriculture and "R-1A" One Family Dwelling zoning district. Advertised in The Standard December 8, 2016.

Chuck Nall, Mark Fischer, and Darlene Fischer were present.

The Chairman called for a staff report.

Mrs. Rector stated we have all return receipts from certified mail to the adjacent property owners. She said the existing land use is a single family dwelling with unattached accessory

building. She said the surrounding zoning and land use is the properties to the North, East, and South are zoned R-1 with single family dwellings and the property to the West is zoned Agricultural and is wooded. She said there is no flood plain. She said they have access off of an existing entrance off Yankeetown. She said the applicant has submitted a letter stating *Marc & Darlene Fischer are requesting relaxation from 10' to 8' between their house and the proposed garage addition. With the existing garage roof design, we cannot offset our addition onto the existing garage so as to get 10' between them. As to adding a portion of the proposed garage addition to the south side for the home, the existing two windows are in bedrooms with no other outside access.* She said Dennis Lockhart, Warrick County Building Inspector has submitted a letter stating *I'm giving a variance to change the building line from ten foot to eight foot from the house to the pole barn at 7599 Yankeetown Road.* She said so he is waving also the building codes.

Attorney Doll said this reduces the spacing between the existing house and the proposed garage addition from ten to eight.

Chuck Nall said actually the existing building that is there is already eight feet from the house.

Attorney Doll said generally that is required because of fire protection.

Mike Winge said normally it is ten but it's grandfathered.

Attorney Doll said right, pre-existing nonconforming. He said the question would be whether or not the property owner would be willing to give Warrick County a Hold Harmless by approving this. He said if you have a fire, they like to have ten feet to keep it from spreading and to also let firefighters get between the buildings to fight the fire; that is the reason there is a ten foot rule. He said if Warrick County grants you the Variance would you give a document back to Warrick County that says we know you're relaxing that and if in the future something bad happens and the fact that the buildings were too close together plays into destruction of the property you understand we are not responsible for that because we gave you permission to build it closer than ten feet. He said it is called a Hold Harmless.

Mrs. Rector said we would prepare that for them.

Attorney Doll asked if they would be agreeable to that.

Darlene Fischer asked if their homeowners insurance be affected.

Attorney Doll said we can't answer that. He said they can't tell them what to do, that is a private matter between them and their carrier.

Mike Moesner said usually when you get additional insurance a guy will come out and look at it and physically inspect.

Attorney Doll said his suggestion is that before they build it tell them; make sure they are going to be willing to cover this. He said you don't want to build it and then find out you can't insure it.

Being no further questions from the Board and no remonstrators present the Chairman called for a motion.

I, Mike Moesner, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the roofline and the windows of existing improvements to which the new structure will be affected.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.

9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easements and facilities in place.
 - e) Subject to a Hold Harmless agreement.

Motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said we will try to get everything done by Wednesday but you will have to pick it up because everybody has to sign it and have it notarized.

Attorney Doll said the property owners.

Mrs. Rector said yes. She said we do have some people in the courthouse that are notaries but this time of year you never know who is trying to get their days in.

Darlene Fischer asked if it would be better to wait until next week because they are not in a big hurry.

Mrs. Rector said that would be fine. She said we have weird holidays; we're off next Monday and on the 30th. She said we are off the 23rd and the 26th and the 30th and then the 2nd.

Darlene Fischer asked if there was a number to call to make sure it's ready to pick up.

Mrs. Rector said yes, we can write that down for you.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None.

Being no other business, the meeting adjourned at 6:19 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held December 19, 2016.

Sherri Rector, Executive Director